



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 6752-99
12 May 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 27 April 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Director, Naval Council of Personnel Boards dated 7 March 2000, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
NAVAL COUNCIL OF PERSONNEL BOARDS
WASHINGTON NAVY YARD
720 KENNON STREET SE RM 309
WASHINGTON, DC 20374-5023

IN REPLY REFER TO
5420
Ser: 00-006
7 Mar 00

From: Director, Naval Council of Personnel Boards
To: Executive Director, Board for Correction of Naval Records

Subj: COMMENTS AND RECOMMENDATION IN THE CASE OF FORMER [REDACTED]
[REDACTED]

Ref: (a) Chairman, BCNR JRE:jdh DN: 6752-99 ltr of 11 Jan 00
(b) SECNAVINST 1850.4D

1. This responds to reference (a) for comments and recommendation regarding petitioner's request for correction of his record to show that he was entitled to a medical retirement because of residuals of a gunshot wound. **We have determined that petitioner's records do not support a medical disability retirement.**
2. The petitioner's case history, contained in reference (a), was thoroughly reviewed in accordance with reference (b) and is returned.
3. The facts in reference (a) show the following:
 - a. On 27 December 1967, the petitioner suffered a "through-and-through gunshot wound of the right distal radius and wrist joint...under hostile fire...on patrol near the DMZ".
 - b. On 3 April 1969, a Medical Evaluation Board (MEB) found petitioner fit for duty and recommended "Permanent U2 Profile/MOS change from Infantry to Admin."
 - c. Petitioner's service evaluations subsequent to April 1969 indicated an excellent to above average record with recommendations for promotion. In fact, petitioner was advanced to the rank of staff sergeant while serving in the Marine Corps Reserve.
 - d. Petitioner apparently worked for at least 10 years subsequent to his release from active duty for a manufacturing company.

Subj: COMMENTS AND RECOMMENDATION IN THE CASE OF FORMER STAFF
~~XX~~

4. The DVA's assigning the petitioner a disability rating of 40% for muscle damage is not in itself sufficient cause to award petitioner a retrospective medical retirement. DoD disability determinations require threshold findings of 'unfitness' and that the member's condition was either incurred or aggravated by active duty prior to the assignment of a VASRD rating. Hence, the mere presence of signs equivalent to a given rating in the VASRD is insufficient to establish unfitness.

5. Based on our review of the records contained in reference (a), there is insufficient evidence to establish that the condition listed by the DVA rendered petitioner UNFIT by reason of physical disability at the time of his release from active duty on 11 June 1971. Accordingly, I recommend his BCNR request be denied.


W. F. ECKERT